

1 RILEY A. CLAYTON  
Nevada Bar No. 005260

2 HALL JAFFE & CLAYTON, LLP  
3 7455 W. WASHINGTON AVENUE  
SUITE 460  
4 LAS VEGAS, NEVADA 89128  
(702) 316-4111  
5 FAX (702)316-4114

6 Attorney for Defendant,  
State Farm Mutual Automobile Insurance  
7 Company

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 JOYCE ISSAQ, individually,  
11 Plaintiff,

12 vs.

13 STATE FARM MUTUAL AUTOMOBILE  
14 INSURANCE COMPANY, JOHN DOES I  
through X, inclusive, and ROE  
15 CORPORATIONS I through X, inclusive,  
16 Defendants.

CASE NO.: 2:10-cv-01599-RLH-PAL

17  
18 **STIPULATION AND ORDER FOR**  
19 **DISMISSAL AND AGREEMENT FOR**  
20 **PRIVATE BINDING ARBITRATION**

21 This Stipulation and Order of Dismissal and Agreement for Private and Binding Arbitration  
22 (hereinafter "Agreement") is entered into by Plaintiff, Joyce Isaaq ("Plaintiff"), and Defendant, State  
23 Farm Mutual Automobile Insurance Company ("State Farm"), (collectively referred to as the "Parties"),  
24 as an alternative method of resolving a dispute that has allegedly arisen from an April 20, 2006,  
25 automobile accident and subsequent claims handling, which culminated in a lawsuit styled *Joyce Isaaq*  
26 *v. State Farm Mutual Automobile Insurance Company, et al*, currently pending in the United States  
27 District Court, District of Nevada, Case No. 2:10-cv-01599-RLH-PAL. Plaintiff is represented by  
28 Layne F. Barney, Esq. State Farm is represented by Hall Jaffe & Clayton, LLP. The following terms  
and conditions of this Agreement will become effective upon the signature by the Parties and the  
execution and filing of the same by this Court.

1. State Farm issued a policy of automobile insurance, Policy No. 2644-838-28C, which

1 provides, among other coverages, uninsured motorist ("UIM") coverage, subject to all terms, conditions,  
2 limitations of the policy and any applicable offsets.

3       2. In an effort to resolve all disputes and controversies between the Parties arising out of and  
4 relating to the subject automobile accident and subsequent claims handling, the Parties have agreed to  
5 place this matter into private binding arbitration, with all damages capped against State Farm at \$92,500,  
6 in "new" UIM money, which is the amount remaining under the policy's UIM "each person" limit.

7       3. For and in consideration of the mutual covenants and promises made herein, the Parties  
8 enter into this Agreement and agree to be bound by its terms as fully stated herein.

9       4. The Parties agree that the arbitration shall be binding and shall be the sole and final  
10 resolution and adjudication of Plaintiff's claims against State Farm, which in any way arise out of or  
11 relate to the April 20, 2006, accident, and any claims handling or claims decision making related thereto.  
12 This clause and mutual promise is of the essence to this Agreement. The arbitrator's decision and award  
13 shall be the sole basis for recovery on these claims and shall be final and binding. The Parties agree that  
14 there shall be no right of appeal of the arbitrator's decision to any trial court, court of appeals, the  
15 Nevada Supreme Court, or to any other court, forum, person or entity, or the arbitrator himself.  
16 Likewise, the Parties agree that there shall be no right to submit a Motion for Reconsideration or similar  
17 or equivalent motion or request to the arbitrator.

18       5. The arbitrator shall not be informed concerning the "range of award" (discussed below)  
19 that the Parties have agreed upon. The arbitrator will only be asked to resolve the issue of Plaintiff's  
20 legal entitlement, if any, to additional UIM proceeds, subject to all terms, conditions, and offsets under  
21 the policy and Nevada law. In other words, the arbitrator shall determine fault for the accident (and  
22 apportion it appropriately if necessary), and the extent of Plaintiff's damages by placing a fair and  
23 equitable total value (which includes medical specials, income loss, other special damages, and general  
24 damages) on the Plaintiff's claim. The arbitrator will not be asked to and will not consider any alleged  
25 claims handling/decision-making issues or liability for extra-contractual claims, including , but not  
26 limited to, breach of the implied covenant of good faith and fair dealing, statutory claims handling  
27 violations, or liability for punitive or other extra-contractual damages, as such extra-contractual claims  
28

1 and damages have been and are expressly waived by Plaintiff and dismissed with prejudice by this  
2 Agreement.

3 6. The Parties will jointly select a single arbitrator to serve as the arbitrator of this case. The  
4 arbitrator will be \_\_\_\_\_.

5 7. Plaintiff, through this Agreement, agrees to dismiss her present lawsuit with prejudice  
6 that is currently on file in the United States District Court, District of Nevada.

7 8. The Parties shall advise the arbitrator of an agreement for binding arbitration and  
8 proceed in a manner that is agreeable to the Parties and to the arbitrator. The Parties shall be allowed to  
9 conduct any reasonable discovery permitted under the Nevada Rules of Civil Procedure. The arbitrator  
10 shall resolve any and all discovery disputes, including the scope of permitted discovery. Subpoenas can  
11 be issued and enforced pursuant to NRS 38.233. Arbitration briefs and exhibits are to be submitted in  
12 accordance with the instructions and desires of the arbitrator.

13 9. The arbitration hearing will be held at a mutually agreed upon date.

14 10. The arbitrator shall be given discretion to conduct the arbitration hearing in an informal  
15 and expeditious manner allowing for such testimony or evidence as is needed to reach a decision. The  
16 parties may submit and the arbitrator may consider written expert reports consistent with the format  
17 requirements of Nev. R. Civ. P. 26(a)(2) in lieu of live expert testimony.

18 11. Regarding the Plaintiff's contractual UIM claim against State Farm, the "range of award"  
19 herein shall be set at \$0.00 "low" and capped at a \$92,500.00 "high." The "high" derives from the  
20 potential payment of the remainder of the UIM policy limit. State Farm, however, will be entitled to all  
21 offsets for amounts previously received by Plaintiff before it may become obligated to pay any "new"  
22 UIM money, i.e., the \$15,000 already paid to Plaintiff by the tortfeasor; plus the \$3,305.37 in medical  
23 payments coverage already paid to Plaintiff by State Farm; plus the \$7,500 initial payment<sup>1</sup> made under  
24 \_\_\_\_\_

25 <sup>1</sup> State Farm and Plaintiff reached an impasse in its settlement negotiations and, as a result, State Farm has agreed to  
26 pay Plaintiff \$7,500 in UIM proceeds, which is the amount of its initial offer to Plaintiff to resolve her UIM claim. Plaintiff  
27 may keep this amount irrespective of the outcome of the arbitration. The parties are presently trying to determine whether  
28 Medicare is entitled to any portion of this payment based upon a potential Medicare lien. Once the potential lien issue has  
been resolved in writing by Medicare, and Medicare has confirmed in writing that no amount is owed to it, State Farm will  
issu a check in the amount of \$7,500 directly to Plaintiff and her attorney. If Medicare is still asserting a lien, then the check

1 the UIM policy, for a total offset of \$25,805.37.

2 12. The only manner in which State Farm would be obligated to pay any "new" UIM money  
3 is if the arbitrator concludes that the total value of Plaintiff's claim exceeds \$25,805.37. By way of  
4 example, if the arbitrator were to conclude that the total value of Plaintiff's claim was only \$20,000, then  
5 State Farm would not be required to pay any "new" UIM money. By way of a second example, if the  
6 arbitrator were to conclude that the total value of Plaintiff's claim was \$40,000, then State Farm would  
7 be obligated to pay \$14,194.63 in "new" UM money.

8 13. The maximum that State Farm would ever be required to pay Plaintiff under this  
9 Agreement is the remaining \$92,500.00 available under the UIM policy. By way of example, if the  
10 arbitrator were to conclude that the total value of Plaintiff's claim was \$200,000, then State Farm would  
11 only be obligated to pay Plaintiff the "high" of the range of award, which is \$92,500 in "new" UIM  
12 money. State Farm would not be required to pay any amount that exceeds \$92,500 in "new" UIM  
13 money, and in such a circumstance, the excess award beyond the applicable offsets, and the award would  
14 be automatically reduced to the \$92,500 "high."

15 14. The arbitrator shall not be permitted to make an award of attorney fees, legal costs, or  
16 interest to any party. An Offer of Judgment will have no effect.

17 15. Payments of the sum awarded, as limited by the parameters set forth herein, shall be made  
18 no later than 20 days after service of the arbitrator's decision.

19 16. The Parties agree to equally share and pay for the arbitrator's fees and costs.

20 17. This Agreement is binding on the Parties, their heirs, executors, administrators, personal  
21 representatives, legal representatives, and other such persons or entities.

22 ///

23 ///

24 ///

25  
26 will be drafted in such a manner so to ensure that Medicare's interests are protected. However, irrespective of who is  
27 ultimately entitled to the \$7,500 UIM payment, the parties recognize that such a payment shall reduce the amount available  
28 under the UIM policy accordingly, and allow the "high" range of any arbitration award to be capped at \$92,500.

1 18. The terms and conditions of this agreement may be modified upon the written and  
2 mutual agreement of the parties.

3 Dated this 22 of October, 2010.

Dated this 19<sup>th</sup> of OCTOBER, 2010.

4 HALL JAFFE & CLAYTON, LLP

THE LAW OFFICES OF LAYNE F. BARNEY

5  
6 By Riley A. Clayton  
7 RILEY A. CLAYTON  
8 Nevada Bar No. 005260  
7455 West Washington Ave., Suite 460  
Las Vegas, Nevada 89128  
Attorney for Defendant

By L. F. Barney  
LAYNE F. BARNEY  
Nevada Bar No. 006563  
3440 W. Cheyenne Ave., Suite 500  
North Las Vegas, Nevada 89032  
Attorney for Plaintiff

10 **ORDER**

11  
12 **IT IS SO ORDERED**

13 **Dated:** October 26, 2010

14  
15  
16 Robert L. Hunt  
17 **CHIEF UNITED STATES DISTRICT JUDGE**